

CHAPTER 97
HOUSE BILL No. 2553

AN ACT concerning the department of commerce; relating to the Kansas enterprise zone act; amending K.S.A. 2009 Supp. 74-50,114, 74-50,131 and 79-201a and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2009 Supp. 74-50,114 is hereby amended to read as follows: 74-50,114. As used in K.S.A. 74-50,113 through 74-50,117 and amendments thereto:

(a) "Ancillary support" means a facility which is operated by a business and whose function is to provide services in support of the business, but is not directly engaged in the business' primary function.

(b) "Business" means any manufacturing business or nonmanufacturing business.

(c) "Business headquarters" means a facility where principal officers of the business are housed and from which direction, management or administrative support for transactions is provided for a business or division of a business or regional division of a business.

(d) "Full-time employee" means a person who is required to file a Kansas income tax return and who is employed by a business or retail business to perform duties in connection with the operation of the business or retail business on:

(1) A regular, full-time basis;

(2) a part-time basis, provided such person is customarily performing such duties at least 20 hours per week throughout the taxable year; or

(3) a seasonal basis, provided such person performs such duties for substantially all of the season customary for the position in which such person is employed. The number of full-time employees during any taxable year shall be determined by dividing by 12 the sum of the number of full-time employees on the last business day of each month of such taxable year. If the business or retail business is in operation for less than the entire taxable year, the number of full-time employees shall be determined by dividing the sum of the number of full-time employees on the last business day of each full calendar month during the portion of such taxable year during which the business was in operation by the number of full calendar months during such period.

(e) "Manufacturing business" means all commercial enterprises identified under the manufacturing ~~standard industrial classification codes, major groups 20 through 39~~ NAICS subsectors 311 to 339.

(f) "Metropolitan county" means the county of Douglas, Johnson, Leavenworth, Sedgwick, Shawnee or Wyandotte.

(g) "NAICS" means the North American industry classification system, as developed under the authority of the office of management and budget of the office of the president of the United States.

~~(g)~~ (h) "Nonmanufacturing business" means any commercial enterprise other than a manufacturing business or a retail business. Nonmanufacturing business shall also include the business headquarters of an enterprise, ancillary support of an enterprise, and an enterprise designated under ~~standard industrial classification codes 5961, 7948-0201 or 7372~~ NAICS industry groups 4541, 5112 and 7112 regardless of the firm's classification as a retail business if that facility for which the sales tax exemption certificate is issued facilitates the creation of at least 20 new full-time positions. In addition, with respect to enterprises in ~~standard industrial classification code 7948-0201~~ NAICS industry group 7112, such enterprises must operate an auto racetrack in the state involving capital improvements costing not less than \$100,000,000.

For taxable years commencing after December 31, 1997, any ancillary support business which would otherwise be eligible for a sales tax exemption or an income, premium or privilege tax credit pursuant to this subsection shall incorporate in its tax filing for the exemption or credit a statement from the secretary of commerce which includes a finding by the secretary that the job expansion incident to the exemption or credit claimed would not have occurred in the absence of the credit or exemption.

~~(h)~~ (i) "Nonmetropolitan region" means a region established under K.S.A. 74-50,116 and amendments thereto and is comprised of any county or counties which are not metropolitan counties.

(j) “Retail business” means: (1) Any commercial enterprise primarily engaged in the sale at retail of goods or services taxable under the Kansas retailers’ sales tax act; (2) any service provider set forth in K.S.A. 17-2707, and amendments thereto; (3) any bank, savings and loan or other lending institution; (4) any commercial enterprise whose primary business activity includes the sale of insurance; and (5) any commercial enterprise deriving its revenues directly from noncommercial customers in exchange for personal services such as, but not limited to, barber shops, beauty shops, photographic studios and funeral services.

(k) “Secretary” means the secretary of the Kansas department of commerce.

~~(l) “Standard industrial classification code” means a standard industrial classification code published in the Standard Industrial Classification manual, 1987, as prepared by the statistical policy division of the office of management and budget of the office of the president of the United States of America.~~

Sec. 2. K.S.A. 2009 Supp. 74-50,131 is hereby amended to read as follows: 74-50,131. Commencing after December 31, 1999: (a) As used in this act: “Qualified firm” means a for-profit business establishment, subject to state income, sales or property taxes, identified under the ~~standard industrial classification (SIC) codes as in effect July 1, 1993, major groups 20 through 39, major groups 40 through 51, and major groups 60 through 89, identified under the North American industry classification system (NAICS) as in effect on October 1, 2000, subsectors 221, 311 to 339, 423 to 425, 481 to 519, 521 to 721 and 811 to 928~~ or is identified as a corporate or regional headquarters or back-office operation of a national or multi-national corporation regardless of ~~SIC code or NAICS designation~~. The secretary of commerce shall determine eligibility when a difference exists between a firm’s ~~SIC code primary business activity~~ and NAICS designation. A business establishment may be assigned a ~~standard industrial classification code or NAICS designation~~ according to the primary business activity at a single physical location in the state.

(b) In the case of firms in ~~major groups 40 through 51, and major groups 60 through 89 or the appropriate NAICS designation subsectors 221, 423 to 425, 481 to 519, 521 to 721 and 811 to 928,~~ the business establishment must also demonstrate the following:

- (1) More than ½ of its gross revenues are a result of sales to commercial or governmental customers outside the state of Kansas; or
- (2) more than ½ of its gross revenues are a result of sales to Kansas manufacturing firms within ~~major groups 20 through 39 or the appropriate NAICS designation subsectors 311 to 339;~~ or
- (3) more than ½ of its gross revenues are a result of a combination of sales described in (1) and (2).

(c) For purposes of determining whether one of the average wage options described in subsection (d) below is satisfied, business establishments located within a metropolitan county, as defined in K.S.A. 74-50,114, and amendments thereto, will be compared only to other businesses within that metropolitan county, and business establishments located outside of a metropolitan county will be compared to businesses within an aggregation of counties representing the business establishment’s region of the state, which regional aggregation will exclude metropolitan counties. Such aggregation shall be determined by the department of commerce.

(d) Additionally, a business establishment having met the criteria as established in subsection (a) or (b), and using the comparison method described in subsection (c), must meet one of the following criteria:

- (1) The establishment with 500 or fewer full-time equivalent employees will provide an average wage that is above the average wage paid by all firms with 500 or fewer full-time equivalent employees which share the ~~same two-digit standard industrial classification code or appropriate NAICS designation~~.
- (2) The establishment with 500 or fewer full-time equivalent employees is the sole firm within its ~~two-digit standard industrial classification code or appropriate NAICS designation~~ which has 500 or fewer full-time equivalent employees.
- (3) The establishment with more than 500 full-time equivalent employees will provide an average wage that is above the average wage paid by firms with more than 500 full-time equivalent employees which share the ~~same two-digit standard industrial classification code or appropriate~~

NAICS designation.

(4) The establishment with more than 500 full-time equivalent employees is the sole firm within its ~~two-digit standard industrial classification code or~~ appropriate NAICS designation which has *more than 500 or more* full-time equivalent employees, in which event it shall either provide an average wage that is above the average wage paid by all firms with 500 or fewer full-time equivalent employees which share the ~~same two-digit standard industrial classification code or~~ appropriate NAICS designation, or be the sole firm within its ~~two-digit standard industrial classification code or~~ appropriate NAICS designation.

(e) As an alternative to the requirements of subsections (c) and (d), a firm having met the requirements of subsections (a) or (b), may qualify, if excluding taxable disbursements to company owners, the business establishment's annual average wage must be greater than or equal to 1.5 times the aggregate average wage paid by industries covered by the employment security law based on data maintained by the secretary of labor.

(f) For the purposes of this section, the number of full-time equivalent employees shall be determined by dividing the number of hours worked by part-time employees during the pertinent measurement interval by an amount equal to the corresponding multiple of a 40-hour work week and adding the quotient to the number of full-time employees.

(g) The secretary of commerce shall certify annually to the secretary of revenue that a firm meets the criteria for a qualified firm and that the firm is eligible for the benefits and assistance provided under this act. The secretary of commerce is hereby authorized to obtain any and all information necessary to determine such eligibility. Information obtained under this section shall not be subject to disclosure pursuant to K.S.A. 45-215 et seq., and amendments thereto, but shall upon request be made available to the legislative post audit division. The secretary of commerce shall publish rules and regulations for the implementation of this act. Such rules and regulations shall include, but not be limited to:

(1) A definition of "training and education" for purposes of K.S.A. 74-50,132 and amendments thereto.

(2) Establishment of eligibility requirements and application procedures for expenditures from the high performance incentive fund created in K.S.A. 74-50,133 and amendments thereto.

(3) Establishment of approval guidelines for private consultants authorized pursuant to K.S.A. 74-50,133 and amendments thereto.

(4) Establishment of guidelines for prioritizing business assistance programs pursuant to K.S.A. 74-50,133 and amendments thereto.

(5) A definition of "commercial customer" for the purpose of K.S.A. 74-50,133 and amendments thereto.

(6) A definition of "headquarters" for the purpose of K.S.A. 74-50,133 and amendments thereto.

(7) Establishment of guidelines concerning the use and disclosure of any information obtained to determine the eligibility of a firm for the assistance and benefits provided for by this act.

Sec. 3. K.S.A. 2009 Supp. 79-201a is hereby amended to read as follows: 79-201a. The following described property, to the extent herein specified, shall be exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

First. All property belonging exclusively to the United States, except property which congress has expressly declared to be subject to state and local taxation.

Second. All property used exclusively by the state or any municipality or political subdivision of the state. All property owned, being acquired pursuant to a lease-purchase agreement or operated by the state or any municipality or political subdivision of the state, including property which is vacant or lying dormant, which is used or is to be used for any governmental or proprietary function and for which bonds may be issued or taxes levied to finance the same, shall be considered to be used exclusively by the state, municipality or political subdivision for the purposes of this section. The lease by a municipality or political subdivision of the state of any real property owned or being acquired pursuant to a lease-purchase agreement for the purpose of providing office space necessary for the performance of medical services by a person licensed to practice medicine and surgery or osteopathic medicine by the board of healing arts pursuant to K.S.A. 65-2801 et seq., and amendments thereto, dentistry services by a person licensed by the Kansas dental board pursuant to K.S.A. 65-1401

et seq., and amendments thereto, optometry services by a person licensed by the board of examiners in optometry pursuant to K.S.A. 65-1501 et seq., and amendments thereto, or K.S.A. 74-1501 et seq., and amendments thereto, podiatry services by a person licensed by the board of healing arts pursuant to K.S.A. 65-2001 et seq., and amendments thereto, or the practice of psychology by a person licensed by the behavioral sciences regulatory board pursuant to K.S.A. 74-5301 et seq., and amendments thereto, shall be construed to be a governmental function, and such property actually and regularly used for such purpose shall be deemed to be used exclusively for the purposes of this paragraph. The lease by a municipality or political subdivision of the state of any real property, or portion thereof, owned or being acquired pursuant to a lease-purchase agreement to any entity for the exclusive use by it for an exempt purpose, including the purpose of displaying or exhibiting personal property by a museum or historical society, if no portion of the lease payments include compensation for return on the investment in such leased property shall be deemed to be used exclusively for the purposes of this paragraph. All property leased, other than motor vehicles leased for a period of at least one year and property being acquired pursuant to a lease-purchase agreement, to the state or any municipality or political subdivision of the state by any private entity shall not be considered to be used exclusively by the state or any municipality or political subdivision of the state for the purposes of this section except that the provisions of this sentence shall not apply to any such property subject to lease on the effective date of this act until the term of such lease expires but property taxes levied upon any such property prior to tax year 1989, shall not be abated or refunded. Any property constructed or purchased with the proceeds of industrial revenue bonds issued prior to July 1, 1963, as authorized by K.S.A. 12-1740 to 12-1749, or purchased with proceeds of improvement district bonds issued prior to July 1, 1963, as authorized by K.S.A. 19-2776, or with proceeds of bonds issued prior to July 1, 1963, as authorized by K.S.A. 19-3815a and 19-3815b, or any property improved, purchased, constructed, reconstructed or repaired with the proceeds of revenue bonds issued prior to July 1, 1963, as authorized by K.S.A. 13-1238 to 13-1245, inclusive, or any property improved, reimproved, reconstructed or repaired with the proceeds of revenue bonds issued after July 1, 1963, under the authority of K.S.A. 13-1238 to 13-1245, inclusive, which had previously been improved, reconstructed or repaired with the proceeds of revenue bonds issued under such act on or before July 1, 1963, shall be exempt from taxation for so long as any of the revenue bonds issued to finance such construction, reconstruction, improvement, repair or purchase shall be outstanding and unpaid. Any property constructed or purchased with the proceeds of any revenue bonds authorized by K.S.A. 13-1238 to 13-1245, inclusive, 19-2776, 19-3815a and 19-3815b, and amendments thereto, issued on or after July 1, 1963, shall be exempt from taxation only for a period of 10 calendar years after the calendar year in which the bonds were issued. Any property, all or any portion of which is constructed or purchased with the proceeds of revenue bonds authorized by K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, issued on or after July 1, 1963 and prior to July 1, 1981, shall be exempt from taxation only for a period of 10 calendar years after the calendar year in which the bonds were issued. Except as hereinafter provided, any property constructed or purchased wholly with the proceeds of revenue bonds issued on or after July 1, 1981, under the authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, shall be exempt from taxation only for a period of 10 calendar years after the calendar year in which the bonds were issued. Except as hereinafter provided, any property constructed or purchased in part with the proceeds of revenue bonds issued on or after July 1, 1981, under the authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, shall be exempt from taxation to the extent of the value of that portion of the property financed by the revenue bonds and only for a period of 10 calendar years after the calendar year in which the bonds were issued. The exemption of that portion of the property constructed or purchased with the proceeds of revenue bonds shall terminate upon the failure to pay all taxes levied on that portion of the property which is not exempt and the entire property shall be subject to sale in the manner prescribed by K.S.A. 79-2301 et seq., and amendments thereto. Property constructed or purchased in whole or in part with the proceeds of revenue

bonds issued on or after January 1, 1995, under the authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, and used in any retail enterprise identified under ~~the standard industrial classification codes, major groups 52 through 59, inclusive~~ NAICS sectors 44 and 45, except facilities used exclusively to house the headquarters or back office operations of such retail enterprises identified thereunder, shall not be exempt from taxation. For the purposes of the preceding provision ~~“standard industrial classification code”~~ “NAICS” means a standard industrial classification code published in the ~~Standard Industrial Classification manual, 1987~~ the North American industry classification system, as prepared by the statistical policy division of ~~developed under the authority of~~ the office of management and budget of the office of the president of the United States. “Headquarters or back office operations” means a facility from which the enterprise is provided direction, management, administrative services, or distribution or warehousing functions in support of transactions made by the enterprise. Property purchased, constructed, reconstructed, equipped, maintained or repaired with the proceeds of industrial revenue bonds issued under the authority of K.S.A. 12-1740 et seq., and amendments thereto, which is located in a redevelopment project area established under the authority of K.S.A. 12-1770 et seq., shall not be exempt from taxation. Property purchased, acquired, constructed, reconstructed, improved, equipped, furnished, repaired, enlarged or remodeled with all or any part of the proceeds of revenue bonds issued under authority of K.S.A. 12-1740 to 12-1749a, inclusive, and amendments thereto for any poultry confinement facility on agricultural land which is owned, acquired, obtained or leased by a corporation, as such terms are defined by K.S.A. 17-5903 and amendments thereto, shall not be exempt from such taxation. Property purchased, acquired, constructed, reconstructed, improved, equipped, furnished, repaired, enlarged or remodeled with all or any part of the proceeds of revenue bonds issued under the authority of K.S.A. 12-1740 to 12-1749a, inclusive, and amendments thereto, for a rabbit confinement facility on agricultural land which is owned, acquired, obtained or leased by a corporation, as such terms are defined by K.S.A. 17-5903 and amendments thereto, shall not be exempt from such taxation.

Third. All works, machinery and fixtures used exclusively by any rural water district or township water district for conveying or production of potable water in such rural water district or township water district, and all works, machinery and fixtures used exclusively by any entity which performed the functions of a rural water district on and after January 1, 1990, and the works, machinery and equipment of which were exempted hereunder on March 13, 1995.

Fourth. All fire engines and other implements used for the extinguishment of fires, with the buildings used exclusively for the safekeeping thereof, and for the meeting of fire companies, whether belonging to any rural fire district, township fire district, town, city or village, or to any fire company organized therein or therefor.

Fifth. All property, real and personal, owned by county fair associations organized and operating under the provisions of K.S.A. 2-125 et seq., and amendments thereto.

Sixth. Property acquired and held by any municipality under the municipal housing law (K.S.A. 17-2337 et seq.) and amendments thereto, except that such exemption shall not apply to any portion of the project used by a nondwelling facility for profit making enterprise.

Seventh. All property of a municipality, acquired or held under and for the purposes of the urban renewal law (K.S.A. 17-4742 et seq.) and amendments thereto except that such tax exemption shall terminate when the municipality sells, leases or otherwise disposes of such property in an urban renewal area to a purchaser or lessee which is not a public body entitled to tax exemption with respect to such property.

Eighth. All property acquired and held by the Kansas armory board for armory purposes under the provisions of K.S.A. 48-317, and amendments thereto.

Ninth. All property acquired and used by the Kansas turnpike authority under the authority of K.S.A. 68-2001 et seq., and amendments thereto, K.S.A. 68-2030 et seq., and amendments thereto, K.S.A. 68-2051 et seq., and amendments thereto, and K.S.A. 68-2070 et seq., and amendments thereto.

Tenth. All property acquired and used for state park purposes by the

Kansas department of wildlife and parks.

Eleventh. The state office building constructed under authority of K.S.A. 75-3607 et seq., and amendments thereto, and the site upon which such building is located.

Twelfth. All buildings erected under the authority of K.S.A. 76-6a01 et seq., and amendments thereto, and all other student union buildings and student dormitories erected upon the campus of any institution mentioned in K.S.A. 76-6a01, and amendments thereto, by any other non-profit corporation.

Thirteenth. All buildings, as the same is defined in subsection (c) of K.S.A. 76-6a13, and amendments thereto, which are erected, constructed or acquired under the authority of K.S.A. 76-6a13 et seq., and amendments thereto, and building sites acquired therefor.

Fourteenth. All that portion of the waterworks plant and system of the city of Kansas City, Missouri, now or hereafter located within the territory of the state of Kansas pursuant to the compact and agreement adopted by K.S.A. 79-205, and amendments thereto.

Fifteenth. All property, real and personal, owned by a groundwater management district organized and operating pursuant to K.S.A. 82a-1020, and amendments thereto.

Sixteenth. All property, real and personal, owned by the joint water district organized and operating pursuant to K.S.A. 80-1616 et seq., and amendments thereto.

Seventeenth. All property, including interests less than fee ownership, acquired for the state of Kansas by the secretary of transportation or a predecessor in interest which is used in the administration, construction, maintenance or operation of the state system of highways, regardless of how or when acquired.

Eighteenth. Any building used primarily as an industrial training center for academic or vocational education programs designed for and operated under contract with private industry, and located upon a site owned, leased or being acquired by or for an area vocational school, an area vocational-technical school, a technical college, or a community college, as defined by K.S.A. 72-4412, and amendments thereto, and the site upon which any such building is located.

Nineteenth. For all taxable years commencing after December 31, 1997, all buildings of an area vocational school, an area vocational-technical school, a technical college or a community college, as defined by K.S.A. 72-4412, and amendments thereto, which are owned and operated by any such school or college as a student union or dormitory and the site upon which any such building is located.

Twentieth. For all taxable years commencing after December 31, 1997, all personal property which is contained within a dormitory that is exempt from property taxation and which is necessary for the accommodation of the students residing therein.

Twenty-First. All real property from and after the date of its transfer by the city of Olathe, Kansas, to the Kansas state university foundation, all buildings and improvements thereafter erected and located on such property, and all tangible personal property, which is held, used or operated for educational and research purposes at the Kansas state university Olathe innovation campus located in the city of Olathe, Kansas.

Twenty-Second. All real property, and all tangible personal property, owned by postsecondary educational institutions, as that term is defined in K.S.A. 74-3201b, and amendments thereto, or by the board of regents on behalf of the postsecondary educational institutions, which is leased by a for profit company and is actually and regularly used exclusively for research and development purposes so long as any rental income received by such postsecondary educational institution or the board of regents from such a company is used exclusively for educational or scientific purposes. Any such lease or occupancy described in this section shall be for a term of no more than five years.

Except as otherwise specifically provided, the provisions of this section shall apply to all taxable years commencing after December 31, 2009.

Sec. 4. K.S.A. 2009 Supp. 74-50,114, 74-50,131 and 79-201a are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

